

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	Cause No. CV-96-121-M-CCL
Plaintiff,)	
)	
v.)	PROPOSED FINAL JUDGMENT
)	
GENERAL ELECTRIC COMPANY,)	
)	Filed:
Defendant.)	
_____)	

Plaintiff, United States of America, having filed its Complaint on August 1, 1996, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact, and without this Final Judgment constituting evidence of, or an admission by Defendant as to any issue of fact or law, and Defendant having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1. Jurisdiction is

retained by this Court to enable any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance with it, and to punish any violation of its provisions.

II.

APPLICABILITY

This Final Judgment applies to the Defendant and to each of its officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

III.

DEFINITIONS

(A) "Advanced Service Package" means the Class "C" or any other service materials offered by General Electric Medical Systems that are not routinely offered to all End Users of General Electric Medical Equipment, including proprietary software, firmware, hardware, manuals, CD-ROMs, and tools.

(B) "Agreement" means any contract, agreement, or understanding, formal or informal, oral or written, between two or more persons.

(C) "Defendant" means General Electric Company.

(D) "End User" means any health care provider that owns, leases, or operates, for its own use in providing health care in

the United States, any Medical Equipment manufactured, leased, or sold by Defendant and each of the End User's full or part-time employees.

(E) "Medical Equipment" means any device used in the diagnosis or treatment of medical conditions.

(F) "Person" means any natural person and any legal entity of any type whatsoever.

(G) "Service" means all preventative, planned, or emergency Medical Equipment maintenance and repair and all diagnostic evaluations involved in the maintenance and repair of such Medical Equipment.

(H) "Operating and Service Materials" means software, tools, manuals, or documentation that General Electric Medical Systems licenses, leases, sells, or otherwise offers for use in operating or servicing any Medical Equipment.

(I) "Third-Party Service" means the Service of any Medical Equipment in the United States not owned, leased, or operated by the party performing such Service.

IV.

PROHIBITED CONDUCT

(A) Defendant is prohibited from entering into or enforcing any provision of any Agreement in conjunction with the licensing or other provision of Operating and Service Materials or related training to an End User pursuant to which (1) the End User represents that it has not, does not, or will not perform Third-

Party Service or (2) the End User is prevented or restrained from performing Third-Party Service.

(B) Defendant is prohibited from requiring that an End User seeking to license, or receive training on, Operating and Service Materials provide to Defendant information regarding that End User's current or prospective practice with regard to the provision of Third-Party Service.

(C) Defendant is prohibited from stating publicly or to any End User that Defendant has a policy or general practice of refusing to license Operating and Service Materials, or of refusing to provide training thereon, to an End User because that End User offers Third-Party Service.

(D) Defendant is prohibited from offering to sell or license Operating and Service Materials to an End User for use on its own Medical Equipment on terms that vary depending upon whether the End User has provided, does provide, or will provide Third-Party Service.

V.

LIMITING CONDITIONS

Nothing in this Final Judgment shall be construed:

(A) to require Defendant to sell or license any item or service to any person;

(B) to require Defendant to provide training of any type to any person;

(C) to prevent Defendant from ascertaining whether (1) an applicant for Operating and Service Materials or training is an

End User or (2) the applicant's employee for whom training is sought is a full-time employee of an End User whose responsibilities include service on the End User's equipment to which the training pertains;

(D) to limit Defendant's discretion over the prices that it charges to any person for any product, service, or training, provided that such pricing does not violate Part IV(D) above;

(E) to prohibit Defendant from agreeing with a licensee of Defendant's Operating and Service Materials that such materials may be used only on a specific piece of Medical Equipment;

(F) to prohibit Defendant from agreeing with a licensee of Defendant's Operating and Service Materials that such materials may be used only at a specific location;

(G) to prohibit Defendant from agreeing with a licensee of Defendant's Operating and Service Materials that such materials may be used only by the Licensee's full-time employees;

(H) to prohibit Defendant from exercising its rights under, or enforcing any term of, any Agreement relating to the licensing or provision of Defendant's Operating and Service Materials or related training, including the provisions of the Limited License section of such Agreement, provided that such term does not violate Part IV above; or

(I) to prohibit Defendant from implementing security procedures that are intended to prevent the use of Operating and Service Materials on other than the specific piece of Medical Equipment as to which the license was granted, or otherwise to

prevent the misappropriation or unauthorized use of such Operating and Service Materials, provided that such protections do not violate any provision contained in Part IV above.

VI.

COMPLIANCE PROGRAM

(A) Defendant shall:

(1) Distribute, within 60 days of its entry, a copy of this Final Judgment to all employees of Defendant whose duties include the responsibility for licensing or selling Operating and Service Materials or Medical Equipment in the United States;

(2) Distribute at least annually thereafter a copy of this Final Judgment to any person who succeeds to a position whose duties include any responsibility for licensing or selling Defendant's Advanced Service Package in the United States; and

(3) Distribute, in a timely and prominently-featured manner, the notice contained in Exhibit A to each person who, on the date this Final Judgment becomes effective, is licensed to use Defendant's Advanced Service Package in the United States and, to each person who received notice from Defendant, dated April 30, 1996, of Defendant's change in its licensing agreements as set forth in Paragraph 6 of the Complaint filed in this case.

(B) Defendant shall maintain a record of the manner in which Defendant has complied with Section VI(A)(1) and (2) of this Final Judgment.

VII.

CERTIFICATION

Within 75 days after the entry of this Final Judgment, the Defendant shall certify to the Plaintiff whether it has complied with Section VI A(1) and A(3) above.

VIII.

INSPECTION

(A) To determine or secure compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant, be permitted:

(1) access during the normal office hours of the Defendant, which may have counsel present, to inspect and copy all records and documents in its possession, custody, or control relating to any matters contained in this Final Judgment; and

(2) to interview the Defendant's directors, officers, employees, and agents concerning such matters. The interviews shall be subject to the Defendant's and the individual's reasonable convenience and without restraint or

interference from the Defendant. Counsel for the Defendant and counsel for the individual interviewed may be present.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division and subject to any legally recognized privilege, the Defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested, provided that the preparation of such report will not unduly burden the Defendant or disrupt its operations.

(C) No information or documents obtained by the means provided in this Section VIII shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then Plaintiff shall give 10-days' notice to Defendant prior to divulging such material in any legal

proceeding (other than a grand jury proceeding) to which Defendant is not a party.

IX.

TERM

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of entry.

X.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

DATED:

UNITED STATES DISTRICT JUDGE

EXHIBIT A

GE Medical Systems has changed its policy for licensing its advanced service software, manuals and tools, which are often referred to as GEMS' Advanced Service Package. The new policy allows health care providers to license GEMS' Advanced Service Package, if otherwise eligible, regardless of whether the health care provider or its employees service any medical equipment owned by other health care providers.